

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MIYOKO'S KITCHEN,

*Plaintiff,*

v.

KAREN ROSS, in her official capacity as  
Secretary of the California Department of Food  
and Agriculture, and STEPHEN BEAM, in his  
official capacity as Branch Chief of the Milk and  
Dairy Food Safety Branch,

*Defendants.*

Case No. 3:20-cv-893-RS

**DECLARATION OF JIM ALLSOPP  
IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION AND  
IN OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS**

I, Jim Allsopp, declare as follows:

1. I am the Vice President of Branding and Creative for Miyoko's Kitchen. I have been with Miyoko's since 2018. In my role as Vice President of Branding and Creative for the company, I am here to help Miyoko Schinner authentically communicate and execute her vision for the brand/company. It is my responsibility to make sure all branding and creative output is true to who we are and what we stand for. This means directing both internal and external teams to ensure our actions, communications and our visuals authentically represent us. My role also includes developing and disseminating the packaging for all of Miyoko's products—including its cultured vegan butter. In light of my role, I am making this declaration to describe in detail the effect that the California Department of Food and Agriculture's actions have had on Miyoko's ability to develop its creative strategies, accurate and clear packaging, and its market position.

2. Miyoko's Creamery is a mission-based, certified B-Corporation. In my role as Vice President of Branding and Creative, I must be able to truthfully and authentically convey our mission, vision and difference. Miyoko's Creamery is not just a faceless product. It was founded, and is led by Miyoko Schinner—an inspirational vegan chef and animal lover on a mission to create a more compassionate, just and sustainable food system. This passion and purpose is why I, and others at Miyoko's proudly choose to work here. The letter from the California Department of Food and

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1 Agriculture's Milk and Dairy Food Safety Branch feels like a gag order. For me, it has created a sense  
2 of uncertainty and unease. I feel we are being villainized and made an example of, just because of the  
3 quality and popularity of our disruptive vegan dairy innovation and the compassionate beliefs of our  
4 founder. As a brand strategist and creative, not being able to truly communicate what our company  
5 and products truly stand for has huge implications.

6         3. Both Miyoko's employees and our consumers believe in "revolutionizing dairy with  
7 plants." We have hundreds of thousands of supporters who look to us and engage with us on a  
8 regular basis. We all believe that we can change the world for the better, simply by making smarter  
9 and more compassionate food choices. In short, consumer demand can change the world. But, in  
10 order to do so, consumers must be able to easily understand what we are all about, and maybe most  
11 importantly, understand how our products function and taste—and they must be able to understand  
12 all of this right there on the front of their packages. The prospect of not being allowed to convey what  
13 a product is through words like "cultured vegan butter," "cultured vegan cheese," "cultured vegan  
14 mozz," and "plant-based dairy" is hugely concerning, and would leave consumers baffled as to our  
15 product's taste and function. Likewise, not being able to convey our mission through phrases like  
16 "Milk plants. Hug cows", "cruelty and animal free" and "revolutionizing dairy with plants" would  
17 damage our ability to differentiate ourselves or speak to consumers' ethical preferences. In short, it  
18 would stifle our growth as a company and we would not be able achieve our mission, reach new  
19 consumers, or truthfully convey the taste and function of our products. Something like "cultured nut  
20 spread" would be meaningless to consumers, whereas they know exactly how to use "cultured vegan  
21 butter." It looks like cheese and butter, it tastes like cheese butter, and you use it and consume it like  
22 cheese and butter. That's because it is cheese and it is butter... Vegan Cheese and Vegan Butter,  
23 100% crafted from plants, just like it says on our packaging. There is no confusion or intent to  
24 confuse. The exact opposite is true. We just want a level playing field, and let the free market decide:  
25 "Do you want to consume animal-based dairy or plant-based products?"

26         4. I first saw the Milk and Dairy Food Safety Branch's letter to Miyoko's in early  
27 December 2019. In the months before that, my team and I had made the decision to revamp all  
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1 product packaging. We were developing new products that would go to market in the spring, and we  
2 thought it was an ideal time to further showcase the company's mission on product packages. We  
3 wanted to show Miyoko as a real person—in small part because many consumers think we are a  
4 Greek brand name but mainly because we felt it important to humanize our brand and show what  
5 matters to our founder; compassion for all living beings. So, all product packages across all lines  
6 included a picture of Miyoko hugging a cow that she had rescued from slaughter. The redesigned  
7 packages used terminology like “butter,” “dairy,” and “cheese.” We call our products things like  
8 “Cultured Vegan Butter” and “Cultured Vegan Cheese” while also proudly and boldly calling out  
9 VEGAN multiple times on the packaging, and 100% crafted from plants, to leave no doubt that we  
10 are animal-free. After much consideration, we feel this is the easiest and clearest way to convey to  
11 consumers what our products are—what they look, smell, and taste like. And including images like  
12 Miyoko hugging her rescued cow along with our mission statement: “Revolutionizing Dairy with  
13 Plants” effectively communicates our mission and what our brand stands for.

14           5.       So, when Miyoko's received the Milk and Dairy Food Safety Branch's letter, this was  
15 especially stressful timing. I immediately felt apprehensive and wondered what we would do with  
16 millions of dollars worth of new packaging. Would we have to dump it, sticker it, or would products  
17 be pulled from the shelf? This was a big deal for a growing startup. I was not sure how we should  
18 respond to the letter, or what actions I could take in my job going forward. I was also concerned that  
19 we might have to immediately change all of the new product packages across all product lines—which  
20 would be extremely detrimental to the company. Beyond that, I was at a loss of how to both  
21 impactfully best do my job yet also not draw further ire from the Milk and Dairy Food Safety  
22 Branch.

23           6.       After the enforcement letter, we suddenly found ourselves in the position of not  
24 knowing where to go from there. It created uncertainty. Would the state make retailers pull all our  
25 products from shelves putting our business in jeopardy? We had no idea. We had been planning a  
26 large nationwide campaign, to tell the company's story and promote our products to the mainstream,  
27 but all of a sudden we felt like this may bring even more negative attention and action from  
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1 authorities. I felt that the Branch's enforcement letter compromised the power of my job and our  
2 position as a company. I definitely have felt that the letter has chilled innovation in my department.  
3 Now when we are developing new branding for our products, we have to fear what to call them, and  
4 what words and imagery can and cannot be used on the product packaging because it might provoke  
5 government agencies.

6         7. I strongly suspect that the Branch targeted Miyoko's at the behest of lobbyists for the  
7 dairy industry. For years the National Milk Producers Federation has written letters to the Milk and  
8 Dairy Food Safety Branch complaining about plant-based dairy products that, similar to Miyoko's,  
9 use terms like "vegan butter," "plant butter," or "plant-based cheese." They have been asking the  
10 State of California to censor our products. This censorship would handicap our ability to clearly  
11 communicate what our products are to consumers—and thus compete in the marketplace. Frankly,  
12 coming from a State like California, this shocked me. I thought we were the state of innovation.  
13 Should Elon Musk not be able to call a Tesla a car because it is fueled by electric power rather than  
14 fossil fuel? Of course not. For the state to say that we can't use terms like butter and cheese when  
15 also clearly labelled as vegan only serves to confuse consumers and stifle innovation and consumer  
16 acceptance. And to ban the use of imagery both on our packaging and website of people hugging  
17 cows at sanctuaries is a condemning admission that the State of California sees farm animals only as a  
18 food source.

19         8. My department has experienced a chilling effect thanks to the Branch's enforcement  
20 letter. We now have to second guess every single word, idea, decision or change to our packages, or  
21 take any bold steps forward in our branding. I've even wondered whether we can still place our  
22 company's mission statement: "Revolutionizing Dairy with Plants" on our product packages. I'm  
23 concerned that anything we do at this point might be "poking the bear" and spur further enforcement  
24 action from the Branch.

25         9. Further, after the Branch's letter became public, we experienced some new and  
26 unexpected difficulties in finding co-packers. I got the clear sense that there was some nervousness  
27 on the part of some co-packers not wanting to be associated with us, as they feared the backlash of  
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1 their animal-based dairy customers and the industry. Other companies that were in discussions about  
2 collaboration with us began indicating discomfort and hesitation in working with us after they became  
3 aware of the Branch's enforcement letter. This has encumbered our speech and our ability to convey  
4 our mission and sell our products.

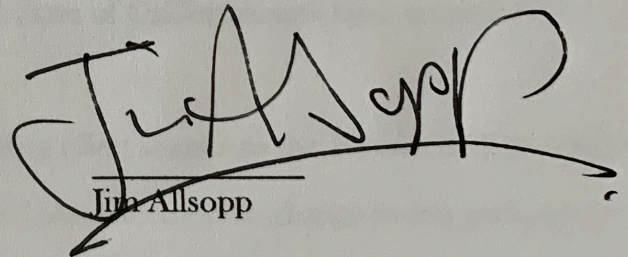
5 10. I remain steadfast in our mission and our approach. We do not want to change our  
6 packaging and creative materials to remove images of Miyoko hugging her cow or truthful phrases  
7 like "cultured vegan butter." As I said before, these claims and images are crucial to our ability to  
8 authentically communicate our mission and brand to consumers. We have to stay true.

9 11. The Milk and Dairy Food Safety Branch's enforcement letter has made us feel as  
10 though there is a target on our backs if we say the "wrong" thing—which is not a good place to be in  
11 when a large part of your job is communications and conveying a mission. I feel that our speech is  
12 being suppressed, along with our ability to implement change and push innovation.

13 12. I have personal knowledge of the facts set forth in this declaration and could and  
14 would testify to those facts if called as a witness.

15 13. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is  
16 true and correct.

17  
18 Executed this 26 day of May, 2020

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Jim Allsopp

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